



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 15, 2022

IN THE MATTER OF:

Appeal Board No. 623353

PRESENT: MARILYN P. O'MARA, MICHAEL T. GREASON MEMBERS

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective December 15, 2020, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed May 5, 2022 (), the Administrative Law Judge granted the claimant's application to reopen A.L.J. Case No. 022-00652 and sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board, insofar as it sustained the initial determination of voluntary separation from employment without good cause. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. The factual issue recited in the initial determination is that the claimant quit her job for medical reasons, but she was not advised by a physician to quit her job, and, therefore, there was no evidence that it was necessary for her to quit. The Judge took testimony and evidence with respect to whether the claimant took adequate steps to preserve her employment, but he did not advise the parties that he would consider this issue, and he did not offer the parties an opportunity to request an adjournment. This case is remanded to afford the parties another opportunity to complete the record with respect to whether the claimant had good cause to quit her job. The parties

are hereby on notice that, at the remand hearing, the Judge will consider whether the claimant took reasonable steps to preserve her employment. The parties also may provide additional testimony and evidence regarding whether the claimant had good cause to quit for medical reasons. We further note that the claimant testified that she was offered a new job prior to quitting, and that she attended orientation with the new employer. The parties are hereby on notice that the Judge will consider whether the claimant had good cause to quit to accept a firm offer of new employment. At the remand hearing, the Judge shall question the claimant with respect to the substance of the orientation she attended, the duration of the orientation, and whether she was paid for attending the orientation. The claimant is directed to produce any offer letters, emails, or other documents that may pertain to the question of whether the claimant received a firm offer of new employment. Any additional documentation must be provided to the Hearing Section and the opposing party at least three days before the remand hearing. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it sustained the initial determination of voluntary separation from employment without good cause, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of voluntary separation from employment without good cause ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of voluntary separation from employment without good cause, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER

MICHAEL T. GREASON, MEMBER